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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

14 BENNY FISH,

Case No. C 03-4554 CW

15 Plaintiff,

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR VIOLATION OF CIVIL
RIGHTS; BATTERY; FALSE ARREST
AND IMPRISONMENT**

16 vs.
17 CITY OF OAKLAND, A municipal
corporation; RICHARD WORD,
18 individually and in his
capacity as Chief of Police
for the City of Oakland;
Officer S. GLOVER, individually
20 and in his capacity as a police
officer for the City of Oakland;
21 R. VIERRA, individually
and in his capacity as a police
officer for the City of Oakland;
22 and DOES 1 through 50, inclusive,
23

JURY TRIAL DEMANDED

Defendants.

24 _____ /
25 Plaintiff BENNY FISH alleges:

26 **GENERAL ALLEGATIONS**

27 1. Plaintiff FISH is informed and believes and thereon alleges
28 that defendant CITY OF OAKLAND is and at all time herein

FIRST AMENDED COMPLAINT

1 mentioned was a Municipal entity duly incorporated in County
2 of Alameda, California.

3 2. Plaintiff FISH is informed and believes and thereon alleges
4 that defendant RICHARD WORD is and at all times herein
5 mentioned was the Chief of Police for the CITY OF OAKLAND.

6 3. Plaintiff FISH is informed and believes and thereon alleges
7 that defendant S. GLOVER is and at all times herein
8 mentioned was employed as a police officer (#8116) by
9 defendant CITY OF OAKLAND.

10 4. Plaintiff FISH is informed and believes and thereon alleges
11 that defendant R. VIERRA is and at all times mentioned
12 herein was employed as a police officer (#7641) by defendant
13 CITY OF OAKLAND.

14 5. The true names and capacities, whether individual,
15 corporate, associate or otherwise, of the defendants named
16 herein as Does 1 through 50, inclusive, are unknown to
17 plaintiff at this time, who therefore sues said defendants
18 by such fictitious names and prays leave to amend this
19 complaint to show their true names and capacities when same
20 have been ascertained by plaintiff. Plaintiff is informed
21 and believe, and upon such information and belief alleges,
22 that each of the Doe defendants is legally responsible and
23 liable for the incident, injuries and damages hereinafter
24 set forth, and that each of said defendants proximately
25 caused said incidents, injuries and damages by reason of
26 their actions, negligence, breach of duty, negligent
27 supervision, management control, battery, violation of
28 constitutional rights, violation of public policy, false

arrest, or by reason of other personal, vicarious or imputed negligence, fault, or breach of duty, whether severally or jointly, or whether based upon agency, employment, ownership, entrustment, custody, care or control or upon any other act or omission. Plaintiffs will ask leave to amend this complaint to insert further charging allegations when such facts are ascertained.

8 6. In doing the acts alleged herein, defendants, and each of
9 them, acted within the course and scope of their employment
10 for the CITY OF OAKLAND.

11 7. In doing the acts and/or omission alleged herein,
12 defendants, and each of them, acted under color of authority
13 and/or under color of law.

14 8. In doing the acts and/or omission alleged herein,
15 defendants, and each of them, acted as the agent, servant,
16 employee and/or in concert with each of said other
17 defendants herein.

STATEMENT OF FACTS

19 9. On or about September 11, 2002, at approximately 10:00 a.m.
20 on Hegenberger Road, in the vicinity of the Bart Station, in
21 Oakland, California, Plaintiff was driving his vehicle when
22 he saw two men running towards his vehicle.

23 10. In fear for his personal safety, plaintiff began driving
24 away from the two men. Plaintiff then stopped his vehicle
25 when he saw a marked unit of the Oakland Police Department;

26 11. Plaintiff is informed and believes and thereon alleges that
27 the two men were Defendants S. Glover and R. Vierra.

28 12. After plaintiff stopped his vehicle, S. Glover and R. Vierra

1 broke windows out of plaintiff's vehicle and dragged him out
2 of the vehicle.

3 13. S. Glover, R. Vierra, and other unidentified officers kicked
4 and hit plaintiff, including hitting him with a flashlight
5 and/or other hard objects.

6 14. Plaintiff is informed and believes and thereon alleges that
7 many other officers of the Oakland Police Department were in
8 the area and observed the assault upon plaintiff; however,
9 these other officers in the area did nothing to intervene,
10 stop or prevent the injuries that were inflicted upon
11 plaintiff.

12 15. Plaintiff was then placed under arrest for resisting arrest
13 and forced to wait at or near the scene of the incident for
14 over two hours before any medical personnel arrived to give
15 him the assistance he required.

16 16. Plaintiff is informed and believes and thereon alleges that
17 the actions identified above by defendant Glover, Vierra,
18 and DOES 1-50, and/or each of them, were excessive,
19 unnecessary and/or in violation of orders, rules,
20 regulations and/or directives of the Oakland Police
21 Department.

22 17. Plaintiff is informed and believes and thereon alleges that
23 defendants Glover, Vierra, DOES 1-50, and/or each of them,
24 subjected plaintiff to the use of excessive force in
25 violation of the Fourth Amendment, as well as the Due
26 Process Clause of the Fourteenth Amendment, to the United
27 States Constitution.

28 18. Plaintiff is informed and believe and thereon alleges that

- 1 the acts and/or omissions of defendants Glover, Vierra, DOES
2 1-50, and/or each of them, were intentional, malicious,
3 oppressive and/or done with reckless, callous and/or
4 conscious disregard for the rights of the plaintiff.
- 5 19. Plaintiff is informed and believes and thereon alleges that
6 the acts and/or omissions of defendants Glover, Vierra, DOES
7 1-50 and/or each of them, were done with deliberate
8 indifference to the rights of the plaintiff.
- 9 20. Plaintiff is informed and believes and thereon alleges that
10 the defendants CITY OF OAKLAND, WORD, DOES 3-50, and/or
11 other high ranking police department officials and/or
12 supervisors, individually and/or acting in concert with one
13 another, were on notice of a repeated pattern of misconduct,
14 including, but not limited to, the use of excessive force,
15 by defendants Glover, Vierrra, DOES 1-50, and/or each of
16 them, but failed to take any or appropriate remedial action
17 to stop said conduct prior to the subject incident.
- 18 21. Plaintiff is informed and believes and thereon alleges that
19 prior to the subject incident, defendants CITY OF OAKLAND,
20 WORD, and/or DOES 1-50, and/or each of them, were on notice
21 of prior incidents in which defendants Glover, Vierra, DOES
22 1-50, and/or each of them were alleged to have used
23 excessive force against citizens. Nevertheless, defendants
24 CITY OF OAKLAND, Richard WORD and/or DOES 1-100, and/or each
25 of them, acting with deliberate indifference, failed to take
26 any or appropriate remedial action, including, but not
27 limited to, remedial training, disciplinary action and/or
28 reassignment, to prevent the unidentified officers sued

1 herein as DOES from continuing to subject citizens to
2 excessive force and/or other violations of the
3 constitutional rights.

4 22. Plaintiff is informed and believe and thereon alleges that
5 defendants CITY OF OAKLAND, Richard Word, and DOES 1-50,
6 and/or other high ranking police department officials and/or
7 supervisors, individually and/or acting in concert with one
8 another, were on notice of the need for more and/or
9 different training, supervision and/or discipline of the
10 unidentified officers sued as DOES, and/or each of them, but
11 failed to take any or appropriate such action prior to the
12 subject incident.

13 23. Plaintiff is informed and believe and thereon alleges that
14 defendants CITY OF OAKLAND, Richard Word, and DOES 1-50,
15 and/or other high ranking police department officials and/or
16 supervisors, individually and/or acting in concert with one
17 another were on notice of a custom, policy, pattern and/or
18 repeated practice of members of the CITY OF OAKLAND Police
19 Department, including, but not limited to, the unidentified
20 individual officers sued herein as DOES, and/or each of
21 them, but failed to take any or appropriate such action
22 prior to the subject incident.

23 24. Plaintiff is further informed and believes and thereon
24 alleges that he suffered violations of his constitutional
25 rights as a result of customs, policies, or practices of the
26 CITY OF OAKLAND, Richard Word, and/or DOES 1-50, and each of
27 them, individually and/or acting in concert with one
28 another, including, but not limited to, customs, policies or

1 practices which encouraged, authorized or condoned the use
2 of excessive force which foreseeably resulted in the
3 violation of the rights of the plaintiff.

4 25. Plaintiff is further informed and believes and thereon
5 alleges that he suffered violations of his constitutional
6 rights as a result of customs, policies, or practices of the
7 CITY OF OAKLAND, Richard Word, and/or DOES 1-50, and each of
8 them, individually and/or acting in concert with one
9 another, including, but not limited to, a custom, policy or
10 practice of failing to identify officers, such as the
11 unidentified officers sued as DOES 1-50, or each of them,
12 with frequent and/or excessive histories of the use of
13 force, citizens' complaints and/or other misconduct and of
14 failing to promptly discipline, train and/or reassign said
15 officers to prevent the violation of the constitutional
16 rights of the citizens.

17 26. Plaintiff is further informed and believe and thereon
18 alleges that as a result of the CITY OF OAKLAND's policy of
19 deliberate indifference, a custom or practice developed
20 within the Oakland Police Department whereby it was accepted
21 practice for police officers to abide by a "Code of
22 Silence." Under this code, police officers charged with
23 upholding the law routinely ignored or otherwise failed to
24 report or take action against fellow officers who engaged
25 in misconduct, including, but not limited to, the
26 unidentified officers sued as DOES 1-50 and/or each of them.

27 27. Plaintiff is further informed and believe and thereon allege
28 that defendants CITY OF OAKLAND, Richard Word, DOES 1-50,

1 and/or each of them, tacitly or directly ratified, approved,
2 condoned and/or otherwise encouraged a pattern, practice,
3 custom or policy of excessive force, other misconduct and/or
4 civil rights violations by DOES 1-50, and/or each of them.

5 28. Plaintiff is further informed and believe and thereon allege
6 that defendants CITY OF OAKLAND, Richard Word, DOES 1-50,
7 and/or each of them, tacitly or indirectly ratified,
8 approved and/or condoned the unjustifiable beating of
9 plaintiff in this case and failed to take any or appropriate
10 remedial action in response to this incident despite the
11 serious nature of the incident that occurred.

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **(Against R. Glover, S. Vierra, and DOES 1-50
Under 42 U.S.C. section 1983)**

16 29. Plaintiff incorporates by reference and realleges herein
17 Paragraphs 1 through 28.
18 30. In doing the acts complained of herein, defendants S.
19 Glover, R. Vierra and DOES 1 through 50, individually and/or
20 while acting in concert with one another, did act under
21 color of state law to deprive the plaintiff of certain
22 constitutionally protected rights, including, but not
23 limited to:
24 (a) the right not to be deprived of liberty without Due
25 Process of Law;
26 (b) the right to be free from unreasonable searches and/or
27 seizures;
28 (c) the right to be free from unlawful arrest;

- 1 (d) the right to be free from pretrial punishment; and/or
2 (e) the right to Equal Protection of the Law.
- 3 31. Said rights are substantive guarantees under the Fourth
4 and/or Fourteenth Amendments to the United States
5 Constitution.
- 6 32. As a result of the violation of plaintiff's constitutional
7 rights as alleged herein, plaintiff suffered injuries and
8 damages, including, but not limited to, pain, suffering,
9 emotional distress, loss of the enjoyment of life, special
10 damages, including, but not limited to, future income and
11 wage loss, medical and/or related expenses, and other
12 general and special damages to be determined according to
13 proof.
- 14 33. The acts and/or omissions of defendants S. Glover, R.
15 Vierra, and DOES 1-50 and/or each of them, were intentional,
16 malicious, oppressive and/or done with a conscious, callous
17 and/or reckless disregard for the rights of plaintiff.
18 Therefore, plaintiffs pray for an award of punitive damages
19 in the amounts to be determined according to proof.
- 20 34. Plaintiff is also entitled to recover his attorneys' fees
21 and costs pursuant to 42 U.S.C. sections 1983, 1988.
22 WHEREFORE, plaintiffs pray for relief and hereinafter set
23 forth.

24 **SECOND CAUSE OF ACTION**

25 **(Against Defendants CITY OF OAKLAND,**
26 **RICHARD WORD, and DOES 1-50 under**
27 **42 U.S.C. section 1983)**

- 28 35. Plaintiff incorporates by reference and realleges herein

1 Paragraphs 1 through 28.

2 36. As against defendants CITY OF OAKLAND, RICHARD WORD, and/or
3 DOES 1-100 in his/their capacity as official policymaker(s)
4 for the CITY OF OAKLAND and/or in defendant WORD's
5 individual capacity, plaintiff further alleges that the acts
6 and/or omissions alleged in the Complaint herein are
7 indicative and representative of a repeated course of
8 conduct by members of the CITY OF OAKLAND Police Department
9 tantamount to a custom, policy or repeated practice of
10 condoning and tacitly encouraging the use of excessive force
11 and the disregard for the constitutional rights of citizens.

12 37. Plaintiff is further informed and believes and thereon
13 alleges that the acts and/or omissions alleged herein are
14 the direct and proximate result of the deliberate
15 indifference of the defendants CITY OF OAKLAND, RICHARD
16 WORD, DOES 1-50, and each of them, to repeated acts of
17 police misconduct which were tacitly authorized, encouraged
18 or condoned by the CITY OF OAKLAND, RICHARD WORD, DOES 1-50,
19 and each of them.

20 38. The injuries to the plaintiff were the foreseeable and
21 proximate result of said customs, policies, patterns and/or
22 practices of defendant CITY OF OAKLAND, RICHARD WORD, DOES
23 1-50, and each of them.

24 39. Plaintiff is further informed and believe and thereon
25 alleges that the damages sustained by plaintiff as alleged
26 herein were the direct and proximate result of municipal
27 customs and/or policies of deliberate indifference in the
28 training, supervision and/or discipline of members of the

1 CITY OF OAKLAND Police Department.

2 40. Plaintiffs are further informed and believe and upon such
3 information and belief allege that the damages and injuries
4 suffered by plaintiff were caused by customs, patterns or
5 practices of the CITY OF OAKLAND, RICHARD WORD, DOES 1-50,
6 and each of them, of deliberate indifference in the
7 training, supervision and/or discipline of officers,
8 including defendants S. Glover, R. Vierra, DOES 1-50, and/or
9 each of them.

10 41. The aforementioned customs, policies or practices of
11 defendant CITY OF OAKLAND, RICHARD WORD, DOES 1-50, and each
12 of them, resulted in the deprivation of the constitutional
13 rights of plaintiff, including, but not limited to, the
14 following:

15 (a) the right not to be deprived of liberty without Due
16 Process of Law;

17 (b) the right to be free from unreasonable searches and/or
18 seizures;

19 (c) the right to be free from unlawful arrest;

20 (d) the right to be free from pretrial punishment; and/or

21 (e) the right to Equal Protection of the Law.

22 42. Said rights are substantive guarantees under the Fourth
23 and/or Fourteenth Amendments to the United States
24 Constitution.

25 WHEREFORE, plaintiffs pray for relief as hereinafter set
26 forth.

27 ///

28 ///

THIRD CAUSE OF ACTION

(Against S. Glover, R. Vierra,
and Does 1-50 for Battery)

43. Plaintiff incorporates by reference and realleges herein Paragraphs 1 through 28.
 44. Defendants S. Glover, R. Vierra, DOES 1-50 and each of them intentionally did acts which resulted in harmful or offensive contact with plaintiff's person.
 45. Plaintiff did not consent to these contacts.
 46. As a result of the batteries alleged herein, plaintiff suffered injuries and damages, including, but not limited to, pain, suffering, emotional distress, loss of the enjoyment of life, special damages, including, but not limited to, future income and wage loss, medical and/or related expenses, and other general and special damages to be determined according to proof. This harmful or offensive contact caused injury, damage, loss or harm to plaintiff.

FOURTH CAUSE OF ACTION

(Against Defendants S. Glover, R. Vierra
and Does 1-50 For False Arrest and Imprisonment)

- 20 47. Plaintiff incorporates by reference and realleges herein
21 Paragraphs 1 through 28.

22 48. Defendants S. Glover, R. Vierra and DOES 1-50 intentionally
23 and unlawfully exercised force or the express or implied
24 threat of force to restrain, detain or confine the
25 plaintiff.

26 49. The restraint, detention or confinement of plaintiff
27 compelled the plaintiff to stay or go somewhere for some
28 appreciable time.

- 1 50. Plaintiff did not consent to the restraint, detention or
- 2 confinement.
- 3 51. Plaintiff was unlawfully arrested and taken into custody.
- 4 52. The restraint, detention and/or confinement and/or arrest of
- 5 plaintiff caused him to suffer injuries and damages,
- 6 including, but not limited to, pain, suffering, emotional
- 7 distress, loss of the enjoyment of life, special damages,
- 8 including, but not limited to, future income and wage loss,
- 9 medical and/or related expenses, and other general and
- 10 special damages to be determined according to proof injury,
- 11 damage, loss or harm.

STATEMENT OF DAMAGES

13 53. Plaintiff incorporates by reference and realleges herein
14 Paragraphs 1 through 52.

15 54. As a result of the acts and/or omissions of defendants, and
16 each of them, as alleged herein, plaintiff is entitled to
17 recover the damages and injuries sustained by him,
18 including, but not limited to:

19 a. General damages, including, but not limited to, damages
20 for pain, suffering, emotional distress, loss of enjoyment
21 of life, loss of the familial relationship, comfort,
22 society, affection and support of the plaintiffs in amounts
23 to be determined according to proof;

24 b. Special damages, including, but not limited to, damages
25 for future income and lost wages; burial and funeral
26 expenses, medical and/or related expenses in amounts to be
27 determined according to proof.

28 55. The acts and/or omissions of defendants were intentional.

1 malicious, oppressive and/or done with conscious or reckless
2 disregard for the rights of plaintiff. Accordingly,
3 plaintiff prays for an award of punitive and exemplary
4 damages in amounts to be determined according to proof.

5 56. Plaintiff will also be entitled to an award of attorneys'
6 fees and costs pursuant to statutes(s) in the event that he
7 is the prevailing party in this action under 42 U.S.C.
8 section 1983, 1988 and/or other statutes and/or laws.

9 57. Plaintiff hereby demands trial by jury.

9 | 57. Plaintiff hereby demands trial by jury.

PRAYER

WHEREFORE, plaintiff prays for judgment against defendants,
and each of them, as follows:

1. General damages to be determined according to proof;
2. Special damages, including but not limited to, past,
present and/or future wage loss, income and support, medical and
related expenses, automobile repair expenses, all in amounts to
be determined according to proof;
3. Attorney's fees pursuant to statute;
4. Costs of suit;
5. As to the individual defendants, punitive and exemplary
damages in amounts to be determined according to proof;
6. For prejudgment interest as permitted by law;
7. For such other and further relief as the Court may deem
just and proper.

25 || DATED: March 11, 2004

ERIK G. BABCOCK
Attorney for Plaintiff